

THUNDERSHIRT, LLC d/b/a
THUNDERWORKS,

Plaintiff,

v.

CENTRAL GARDEN & PET COMPANY,

Defendant.

V.

CENTRAL GARDEN & PET COMPANY,

Defendant.

Plaintiff THUNDERSHIRT, LLC d/b/a THUNDERWORKS (“ThunderWorks” or “Plaintiff”) submit the following Answer and Affirmative Defenses to Defendant CENTRAL GARDEN & PET COMPANY’s (“Central Garden” or “Defendant”) Counterclaims. Plaintiff denies all allegations in Defendant’s Counterclaims unless expressly admitted below. Plaintiff further responds to Defendant’s specific allegations as follows:

1. Plaintiff admits that Defendant purports to seek the declaratory judgments and damages as alleged in Paragraph 1. Plaintiff denies that Defendant has properly set forth the counterclaims alleged in Paragraph 1, and further denies that Defendant is entitled to the relief it seeks. Except as expressly admitted, denied.
2. Admitted, on information and belief.
3. Admitted.
4. Plaintiff admits Defendant sells pet garments. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 4, and therefore denies the same.

5. Admitted.
6. Admitted.
7. Admitted.
8. Plaintiff incorporates by reference its responses to the previous paragraphs.
9. Plaintiff admits that Claim 1 of Plaintiff's Complaint alleges that Defendant has infringed the '211 Patent, including Claim 14 of the '211 Patent.
10. Admitted.
11. Denied.
12. Denied.
13. Denied.
14. Plaintiff admits that Defendant purports to seek a declaratory judgment from this Court. Plaintiff denies that Defendant is entitled to the relief it seeks.
15. Plaintiff incorporates by reference its responses to the previous paragraphs.
16. Admitted.
17. Denied.
18. Denied.
19. Plaintiff admits that Defendant purports to seek a declaratory judgment from this Court. Plaintiff denies that Defendant is entitled to the relief it seeks.
20. Plaintiff incorporates by reference its responses to the previous paragraphs.
21. Admitted.
22. Denied.
23. Denied.
24. Denied.

25. Denied.

26. Plaintiff's trade dress for its THUNDERSHIRT CLASSIC pet garments is comprised of a distinctive design and a grey color used on the fabric from which Plaintiff's pet garments are constructed. Except as expressly admitted, denied.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted.

34. Plaintiff admits that Defendant purports to seek a declaratory judgment from this Court. Plaintiff denies that Defendant is entitled to the relief it seeks.

35. Paragraph 35 of Defendant's counterclaims is blank.

36. Plaintiff incorporates by reference its responses to the previous paragraphs.

37. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 37, and therefore denies the same.

38. Admitted.

39. Denied.

40. Admitted.

41. Denied.

42. Denied.

43. Denied.

- 44. Denied.
- 45. Denied.
- 46. Plaintiff incorporates by reference its responses to the previous paragraphs.
- 47. Denied.
- 48. Denied.
- 49. Denied.

Plaintiff demands a jury trial on all issues so triable.

WHEREFORE, Plaintiff requests that the Court deny all relief requested by Defendant, grant judgment in Plaintiff's favor, and award Plaintiff its attorneys' fees and costs.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Defendant's Counterclaims fail to state a claim against Plaintiff for which relief can be granted.

Second Affirmative Defense

Defendant's Counterclaims are barred by the doctrine of unclean hands.

Date: July 16, 2018

Respectfully submitted,

/s/ Kathryn G. Cole
J. Mark Wilson
N.C. State Bar. No. 25763
Kathryn G. Cole
N.C. State Bar No. 39106
Minnie Kim
N.C. State Bar No. 46173
MOORE & VAN ALLEN PLLC
Bank of America Corporate Center
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202
(704) 331-1000
(704) 331-1159 (facsimile)
E-mail: markwilson@mvalaw.com
katecole@mvalaw.com
minniekim@mvalaw.com

Attorneys for Plaintiff Thundershirt, LLC

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented to accept service by electronic means.

Dated: July 16, 2018

/s/ Kathryn G. Cole